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No. 88-293

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

COMMUNITY FOR CREATIVE NON-VIOLENCE, *et al.*,
Petitioners,

v.

JAMES EARL REID,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF THE COPYRIGHT JUSTICE COALITION AS AMICUS CURIAE

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August 19, 1988

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QUESTIONS PRESENTED

1. Whether a commissioned work created by an independent artist outside of the traditional employment relationship should be classified as a "work made for hire" under the 1976 Copyright Act, 17 U.S.C. § 101, where the parties did not agree in writing that the work should be considered to be "made for hire," and where the work does not fall within one of the nine categories of works enumerated in subdivision (2) of the definition of that term.

2. Whether Congress intended subdivision (2) of the definition of "work made for hire" in the 1976 Copyright Act, 17 U.S.C. § 101, to preempt the common law "direct and supervise" test formerly used to determine the work made for hire status of commissioned works under the 1909 Copyright Act, 17 U.S.C. § 26 (repealed 1976).

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BRIEF OF THE COPYRIGHT JUSTICE COALITION AS AMICUS CURIAE

The Copyright Justice Coalition (CJC) submits its brief *amicus curiae* in support of the petition for certiorari filed by the Community for Creative Non-Violence, *et al.* (CCNV) in this case. All parties have consented to the filing of this brief by the CJC, and their consent letters have been filed with the Clerk of this Court.

INTEREST OF AMICUS CURIAE

The CJC is an *ad hoc* group of 50 organizations whose over 100,000 members comprise a large segment of the community of independent creators in the United States.[1]

[1] The members of the CJC are listed in Appendix A to this brief.

On behalf of its members, the CJC participated as *amicus curiae* in support of the respondent in the court below. Counsel for CJC filed an extensive brief tracing the legislative history of the "work made for hire" doctrine,[2] and participated in the oral argument before the court. Although it argued for and agrees with the District of Columbia Circuit's resolution of the work for hire questions presented in this case, the CJC urges this Court to grant the petition for certiorari because of the overriding need to establish uniform rules governing the determination of authorship and copyright ownership under the United States copyright laws.

The CJC represents individual creators throughout the country whose artistic and financial livelihoods are profoundly affected by the work for hire rules of the Copyright Act of 1976. 17 U.S.C. §§ 101 *et seq.* Under those rules, the creators of copyrightable works are not treated as either authors or copyright owners of their own works and are divested of all copyright rights in those works. *Id.* § 201(b). Instead, the "author" and copyright owner of a work for hire is either (i) the employer of the creator who is hired as an "employee," or (ii) the party that commissioned the work when the parties have agreed in writing that it shall be considered "for hire", and the work falls within one of nine enumerated categories of commissioned works eligible for work for hire treatment under the statute. *Id.* § 101 (definition of "work made for hire").

The individual creators represented by the CJC have a strong and vital interest in confining the scope of this doctrine to the limits that Congress established. The membership of CJC organizations include free-lance photographers, artists, illustrators, writers, cartoonists, actors, and songwriters. They are not traditional em-

[2] For convenience, the statutory phrase "work made for hire" will hereafter be shortened to "work for hire."

ployees who receive a salary and other typical employment benefits such as insurance and paid vacation time. Instead, they produce photographs, graphic designs, illustrations, magazine articles, books, advertising materials, cartoons, musical compositions and other creative works "on commission," an arrangement whereby the creator is hired and paid by a commissioning party on a project-by-project basis to create a particular work for a specific purpose.

It is critically important for free-lance creators to be able to claim authorship of their own works in order to build a reputation that attracts new clients. Equally as important, free-lance creators rely heavily on the income-producing potential associated with ownership of the copyrights in their works. Copyright ownership ensures that the free-lance creator can sell, assign, or license his work, and can use that work as the basis for creating derivative works. Rights to the income derived from royalties that result from exploitation of the copyright in original and derivative works are an integral part of a free-lance creator's ability to sustain his business and to build even a minimal base of financial security.

Work for hire has wreaked havoc with creators' ability to establish and preserve any degree of financial stability. Creators' fundamental rights of authorship and copyright ownership have been usurped through the systematic use of work for hire arrangements covering commissioned works that are statutorily ineligible for work for hire treatment. Works of fine art such as sculpture and photographs taken for advertisements, for example, are not included in the categories of works enumerated in subsection (2) of the definition of "work made for hire" and thus cannot legally be the subject of a work for hire agreement. Yet the failure of many courts to recognize the exclusivity of the categories of commissioned works set forth in subdivision (2) of the definition has allowed commissioning parties to ignore this statutory limitation.

Furthermore, many CJC creators who refuse to sign work for hire agreements find themselves in the predicament that the respondent in this case experienced in district court. They face the prospect in many jurisdictions of being classified as "employees" under subsection (1) of the definition of work for hire. As statutory "employees," creators lose all authorship and copyright rights in their works as a matter of law, without any written agreement so providing, without the creators receiving any of the usual benefits of an employment relationship, and usually without any awareness by the parties that such a relationship exists.

The decision of the court below, together with that of the Fifth Circuit in *Easter Seal Society for Crippled Children v. Playboy Enterprises*, 815 F.2d 323 (5th Cir. 1987), *cert. denied*, 108 S.Ct. 1280 (1988), protects free-lance creators from the confiscatory consequences of an overbroad work for hire doctrine. By confining the scope of that doctrine to the limits that Congress intended when it enacted the Copyright Act of 1976, *Easter Seal* and the decision below ruled that the fundamental purpose of that statute—to foster and encourage creativity—should not be eviscerated by an artificial presumption that the party commissioning a work is deemed the "employer" of an independent creator. Congress never envisioned that the statute would be read to disrupt and destroy the incentives for free-lance creators to exercise their talents. The protection offered by the District of Columbia and Fifth Circuits, however, is available only to the relatively few CJC creators who live and work in those jurisdictions. The majority of CJC members face the dilemma of either signing work for hire agreements, or being considered an "employee" for copyright purposes only. Unless that dilemma is resolved favorably for free-lance creators throughout the country, work for hire will dry up our national resources of free-lance creative talent.

SUMMARY OF ARGUMENT

This case presents issues of central importance to the fair administration of the United States copyright laws. The concept of work for hire has been a difficult and troubling one for Congress and courts alike throughout this century. Before the 1976 Act, no statutory definition of that concept existed. Absent statutory guidance, the courts gradually shaped a doctrine that divested free-lance creators working "on commission" of all authorship and copyright rights on the basis of a legal fiction that presumed the parties had intended that result. In the fifteen years that preceded enactment of the Copyright Act of 1976, the Copyright Office and representatives of creators' interests demonstrated the need for drastically limiting the applicability of that legal fiction. The result was a statutory definition of work for hire that established a dichotomy between two fundamentally different types of work—those created by traditional (i.e., salaried) employees, and those produced on commission by independent creators. The primary significance of the new definition with respect to commissioned works was that it restricted the applicability of the work for hire doctrine only to the circumstances explicitly authorized by the statute.

Despite these efforts, controversy over the proper interpretation of the work for hire doctrine has continued. A steady stream of confused and often conflicting decisions has emerged from the courts ever since the effective date of the 1976 Copyright Act. As the court below noted, commentators continue to express their concern about the chaotic state of the copyright law in this area and to voice nearly uniform disagreement with the decisions that fail to acknowledge the limitations on the applicability of work for hire imposed by Congress in 1976.

Against this background, the confusion and lack of predictability have caused substantial hardship for creators and users alike in determining authorship and copy-

right ownership in commissioned works. In the Second, Fourth, and Seventh Circuits, free-lance creators are considered "employees" for work for hire purposes if a sufficient degree of control is exercised by the commissioning party. *See Aldon Accessories Ltd. v. Spiegel*, 738 F.2d 548 (2d Cir.), *cert. denied*, 469 U.S. 982 (1984); *Evans Newton Inc. v. Chicago Systems Software*, 793 F.2d 889 (7th Cir.), 107 S.Ct. 434 (1986); *Brunswick Beacon v. Schock-Hopchas Publishing Co.*, 810 F.2d 410 (4th Cir. 1987). Accordingly, the commissioned works of most free-lance creators in those jurisdictions are works for hire regardless of the type of work involved or the existence of a written agreement.

In contrast, free-lance creators in the District of Columbia and Fifth Circuits are not considered "employees" of the parties that commissioned them, and their works qualify as works for hire only if the statutory conditions set forth in subsection (2) of the definition of that term are satisfied. *Community for Creative Non-Violence v. Reid*, 846 F.2d 1485 (D.C. Cir. 1988), *petition for cert. filed*, No. 88-293 (Aug. 17, 1988); *Easter Seal Society for Crippled Children & Adults of Louisiana, Inc. v. Playboy Enterprises, supra.* Free-lance creators operating in other jurisdictions must await their circuit courts' decisions before they will know whether they will have a meaningful opportunity to avoid having all their works classified as works for hire under the "employee" prong of the statutory definition.

In three of these cases (*Aldon*, *Evans Newton* and *Easter Seal*), this Court has declined to resolve the conflict in the Circuits over the meaning of the 1976 revisions to the work for hire doctrine. In explaining why the *Easter Seal* case was not an appropriate vehicle for resolving the work for hire issue, the Solicitor General nonetheless acknowledged that "the issue on which the lower courts are divided is important and may in the future warrant resolution by [this] Court." Brief for

the United States as *Amicus Curiae* at 8, *Easter Seal* (No. 87-482). While prior cases may not have been appropriate for consideration by this Court, this case presents an ideal opportunity to settle the conflict.

First, unlike *Aldon* and *Easter Seal*, in which work for hire arose as an affirmative defense in the context of an infringement action, this case involves a dispute between the two primary players in the work for hire controversy: the commissioning party (CCNV) and the creator himself (Reid). Both parties claim authorship of and copyright ownership in the sculpture in dispute, and it is clear that CCNV's claim can succeed only if Reid is classified as an "employee" for copyright purposes. Reid's position, on the other hand, is that a commissioned work can qualify as a work for hire only if both statutory conditions set forth in subsection (2) of the definition are satisfied. Thus, this case squarely presents the fundamental questions that have divided the lower courts, in a case involving the parties whose interests are most directly affected by the work for hire controversy.

Second, the opinion of the court below makes unmistakably clear that its interpretation of the 1976 revisions to work for hire makes conflict with *Aldon Accessories* "unavoidable." *CCNV v. Reid*, 846 F.2d at 1497 n.18. This case thus presents the juxtaposition of two fundamentally different and irreconcilable interpretations of an important federal statute.

Finally, further delay in the resolution of this controversy will cause substantial harm to the creators who are the intended beneficiaries of the protections afforded by the copyright laws. Free-lance creators lack the resources to litigate work for hire questions repeatedly until an appropriate case is finally accepted for review by this Court. This case is exceptional not only because the artist's position was vindicated, but also because the artist had the resources to litigate the questions now

before this Court. Few, if any, free-lance creators can afford to sustain this sort of litigation. Thus, although confusion in the lower courts will continue, it is exceedingly unlikely that another work for hire case involving a creator as a party will come before this Court for many years. The CJC therefore urges the Court to take this opportunity to settle the work for hire controversy.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. THIS CASE PRESENTS ISSUES OF NATIONAL IMPORTANCE FOR ALL PARTIES WHO CREATE OR USE COPYRIGHTABLE WORKS

A fundamental tenet of United States copyright law is that a creator of copyrightable work has the right to proclaim himself its author and to reap the benefits accorded the owner of the copyright in that work. *See* 17 U.S.C. § 106. Section 201 of the Copyright Act of 1976 thus provides that "[c]opyright in a work protected under this title vests initially in the author or authors of the work." *Id.* § 201(a). Congress has never defined the term "author" in the various revisions of the copyright laws that have been enacted since the first statute was passed in 1790. Act of May 31, 1790, Ch. 15, 1 Stat. 124. Despite the absence of an explicit statutory definition, the principle is well-established that the person who actually creates the work should normally be deemed its "author." *See Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884) (quoting with approval the definition of "author" as "he to whom anything owes its origin; origination; maker. . . .").

The work for hire concept is an exception to this general rule. The concept first emerged during the development of common law copyright and was codified for the first time in the 1909 Copyright Act. Act of March 4, 1909, § 26, Pub. L. No. 60-349, Ch. 320, 35 Stat. 1075. *See Colliery Eng. Co. v. United Corresp. Schools Co.*, 94 Fed. 152 (C.C.S.D.N.Y. 1899); *Little v. Gould*, 15 F.

Cas. 612 (C.C.N.D.N.Y. 1852). The key element of the concept always has been the use of a statutory presumption to elevate to the status of "author" someone other than the actual creator. The 1909 Act, for example, stated that the term "author . . . shall include an employer in the case of a work made for hire." 17 U.S.C. § 26 (repealed 1976). More recently, Congress provided in the 1976 Copyright Act that "[i]n the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author . . . ." *Id.* § 201(b). As author, such employer or other person "owns all of the rights comprised in the copyright . . . unless the parties expressly agree otherwise in a written instrument . . . ." *Id.* § 201(b).

Authorship and ownership of copyright under the 1976 Act thus turn on whether the work qualifies as a work for hire. If the work at issue is not a work for hire, its creator is considered the author and initial copyright owner. But if the creation is a work for hire, then the author and copyright owner is the employer or, if certain statutory conditions are satisfied, the party that commissioned the work. Where a commissioned work is involved, therefore, entitlement to the benefits of copyright ownership enumerated in § 106 of the 1976 Act depends upon how the work for hire question is resolved.

A large percentage of the copyrightable works produced in this country for commercial purposes are created by persons who are not traditional employees of the parties for whom the work is done.[3] Publishers and ad-

[3] A 1955 Copyright Office study revealed that approximately 40 percent of copyright registrations issued by the Copyright Office were for works for hire. *See* Hardy, "Copyright Law's Concept of Employment—What Congress Really Intended," 35 *J. Copyright Soc. U.S.A.* 210 (April 1988). The percentages of certain types of works registered as works for hire were even higher: 92 percent of motion picture registrations and 93.7 percent of periodical regis-

vertising agencies increasingly rely on specialized outside talent to produce highly sophisticated creative work that cannot be done in-house. Free-lance creators who carve out specialties in advertising photography or medical illustration are customarily paid a fee that compensates the creator only for the specific use contemplated by the commissioning party. Such compensation does not reflect the economic value of the work over the life of the copyright term, which is seventy-five years from the year of publication if the creation is a work for hire. 17 U.S.C. § 302(c). Nor is the compensation paid free-lance creators accompanied by employment benefits that may warrant foregoing the benefit of retaining copyright rights. In order to maintain economic viability, free-lance creators therefore rely heavily on their fundamental rights to claim authorship of and copyright ownership in the works they create. These intangible rights are the only valuable business assets that most free-lance creators have.

Under a work for hire arrangement, independent creators lose those rights. They cannot claim authorship of their works by reproducing them in their portfolios. They cannot require a commissioning party to acknowledge their authorship of a work for hire because the statutory "author" is the commissioning party and not the creator.[4] They cannot license others to use the work for

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trations were issued for works for hire. *Id.* n.2. Current statistics are not known because the Copyright Office does not keep records of the percentages of works registered on a "for hire" basis. However, the expanding reliance of users on outside talent to fulfill specific needs suggests that the percentage of works registered as works for hire is much greater today than it was over 30 years ago.

[4] As the court below acknowledged, there is a basis outside the Copyright Act for a creator to require that he be given authorship credit. *See CCNV v. Reid*, 846 F.2d at 1498, *citing Smith v. Montoro*, 648 F.2d 602 (9th Cir. 1981); *Dodd v. Fort Smith Special School Dist. No. 100*, 666 F. Supp. 1278, 1284-85 (W.D. Ark. 1987);

other non-competing purposes because the statute vests copyright rights exclusively in the commissioning party. Nor can creators subject to a work for hire arrangement use the original work as the basis for creating derivative works; that right also vests in the commissioning party upon creation of a work for hire.

For these reasons, free-lance creators have long supported legislative attempts to confine the work for hire doctrine to its origins in the traditional employment relationship.[5] Those efforts finally came to fruition with the passage of the 1976 Copyright Act. The new copyright statute contained a compromise definition of work for hire that for the first time distinguished between works created by employees and works created by independent contractors on commission. Since the focus in the legislative history was on crafting the circumstances under which commissioned works would be eligible for work for hire treatment, Congress did not pay much attention to the "employee" prong of the definition. The ultimate result was a definition of work for hire that incorporated but did not define works created by employees, and that provided that certain types of commissioned works would be eligible for work for hire treatment if the parties expressly so agreed in a written instrument. 17 U.S.C. § 101. The absence of a statutory

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Follett v. Arbor House Publishing Co., 497 F. Supp. 304, 311 (S.D.N.Y. 1980).

[5] In the course of the hearings that preceded the 1909 Act, publishers acknowledged that payment of a salary to an employee "entitle[d] an employer to all rights to obtain a copyright in any work performed during the hours for which such salary was paid." 2 Legislative History of the 1909 Copyright Act at 65 (E. Brylawski & A. Goldman eds. 1976) (statement of Mr. A.W. Elson of A.W. Elson & Co., educational art publishers). Moreover, an early Supreme Court case involving work for hire presumed that vesting ownership of copyrightable works in employers was logical in the context of the traditional employment relationship. *See Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

definition of "employee," together with ambiguity concerning whether a commissioned work that failed the subdivision (2) tests could qualify as a work for hire under subdivision (1), made the congressional compromise on the work for hire language a precursor to continued uncertainty and disagreements.

If the work for hire controversy is not resolved by this Court, free-lance creators have the most to lose. Much of the litigation involving work for hire questions takes place in New York, where many creators live and work. Notwithstanding the decision by the court of appeals in this case, courts in that jurisdiction are obliged to follow the Second Circuit's ruling in *Aldon Accessories*.[6] Under that decision, the copyrightable works of free-lance creators operating under the supervision and control of a publisher or advertising agency are automatically "employee" works for hire regardless of the type of work involved, whether or not a traditional employment relationship exists, and irrespective of whether the parties executed a written agreement. Unless this Court overrules *Aldon Accessories* and adopts the reasoning of the court below, thousands of free-lance creators will lose all rights in their works as a result of an after-the-fact presumption that they functioned as "employees," even though they received no employment benefits.

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[6] A recent post-*Aldon Accessories* district court decision in the Southern District of New York illustrates the harm that will befall CJC members if the Second Circuit's reasoning is allowed to stand. In *Blum v. Kline*, No. 86 CIV 8149, slip op. at 2-3 (S.D.N.Y. May 17, 1988), the court applied *Aldon Accessories* in ruling that an individual photographer, who concededly was not "actually an employee" of the fashion magazine that commissioned him, would nevertheless be considered an "employee" for copyright purposes if the magazine actively directed and supervised his work. The court further concluded that the extent of supervision and control could be determined only after a full-fledged trial at which the roles played by the parties would be explored.

II. GRANTING THE PETITION IS NECESSARY TO RESOLVE A CLEAR AND IRRECONCILABLE CONFLICT IN THE COURTS OF APPEALS

The work for hire cases that arose in the first few years after the 1976 Copyright Act went into effect on January 1, 1978 suggested that the courts would adhere to Congress' intent that subdivision (2) of the definition of work for hire should be the exclusive source for determining the eligibility of commissioned works for that status. These first few cases did not seriously entertain the notion that a commissioned work that cannot meet the subdivision (2) criteria can nevertheless qualify as a work for hire under subdivision (1). *See Childers v. High Soc'y Magazine*, 557 F. Supp. 978, 984 (S.D.N.Y. 1983); *Aitken, Hazen, Hoffman, Miller, P.C. v. Empire Constr. Co.*, 542 F. Supp. 252, 257 (D.Neb. 1982); *BPI Sys., Inc. v. Leith*, 532 F. Supp. 208, 210 (W.D. Tex. 1981); *Mister B Textiles, Inc. v. Woodcrest Fabrics, Inc.*, 523 F. Supp. 21, 23-24 (S.D.N.Y. 1981); *Meltzer v. Zoller*, 520 F. Supp. 847, 854-55 (D.N.J. 1981).[7]

The Second Circuit's 1984 decision in *Aldon Accessories* reversed that trend. In that case, the Second Circuit held that a commissioned work produced by an independent contractor was a work for hire under the "employee" prong of the statutory definition if the commissioning party exercised a sufficient degree of direction and control over the efforts of the contractors. The Second Circuit noted that judicial decisions construing the

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[7] In the *Meltzer* case, for example, the court held that architectural drawings could not be works for hire under the 1976 Act because they were not included in the categories listed in subdivision (2) of the definition of that term. 520 F. Supp. at 854. This was true, the court reasoned, even though architectural drawings were considered works for hire under the 1909 Act, because Congress was presumably aware of the prior applications of that concept and deliberately excluded architectural plans from the subdivision (2) categories. *Id.*

1909 Act found an employer-employee relationship established even where the creator indisputably was not a "regular or formal" employee. *Aldon Accessories*, 738 F.2d at 552 (citations omitted). The court concluded that "[n]othing in the 1976 Act or its legislative history indicates that Congress intended to dispense with this prior law . . . ." *Id.* According to the Second Circuit, subdivision (2) of the work for hire definition was intended to apply only "where the contractor did all of the creative work and the hiring party did little or nothing." *Id.* (citation omitted).

The Fourth Circuit's decision in *Brunswick Beacon, Inc. v. Schock-Hopchas Publishing Co.*, *supra*, adopted the *Aldon Accessories* analysis. That court agreed that an independent contractor could be classified as an employee if a sufficient degree of supervision and control was exercised by the commissioning party. 810 F.2d at 413. The court held, however, that there was insufficient evidence to show that supervision and control was actually exercised over the advertisements in question, and thus, that the newspaper staff were not "employees" of the advertisers. *Id.*

The Seventh Circuit extended the *Aldon Accessories* analysis in *Evans Newton Inc. v. Chicago Systems Software*, *supra*. In holding that software created by an independent contractor was a work for hire, the Seventh Circuit viewed the mere right to direct and control the creator's work as sufficient to render him an "employee"—even in the absence of any evidence that control was actually exercised. *Evans Newton*, 793 F.2d at 894. *See also Real Estate Data Inc. v. Sidwell*, 809 F.2d 366 (7th Cir. 1987) (applying 1909 Act, to reach the same result with respect to maps).

The *Aldon Accessories* interpretation was resoundingly rejected by the Fifth Circuit in *Easter Seal Society v. Playboy Enterprises*, *supra*. Adopting what it called a

"literal interpretation" of the 1976 definition of work for hire, the Fifth Circuit held that subsection (1) should be applied only to "agency-law" employees, and that eligibility of all works by independent contractors to be works for hire must be determined solely by reference to whether the subdivision (2) conditions are satisfied. *Easter Seal*, 815 F.2d at 334-35.

The court below agreed with the Fifth Circuit's "literal interpretation." It held that a work created by an independent contractor (*i.e.*, a creator who is not an employee under agency law principles) qualifies as a work for hire *only* if the two conditions set out in subdivision (2) are satisfied. The work must fall within one of the eligible categories listed in that subdivision, and the parties must agree in writing that the work shall be considered "for hire." 846 F.2d at 1494. The court found that the sculpture commissioned by CCNV in this case could not be a work for hire because respondent was clearly not an "employee" of CCNV under agency principles, and because neither of the statutory conditions prescribed by subdivision (2) of the work for hire definition were satisfied.

These precedents make clear that a stark conflict exists between the Second, Seventh and Fourth Circuits on the one hand, and the District of Columbia and Fifth Circuits on the other. There is clear and unequivocal disagreement about whether Congress intended in the 1976 Act to overrule the common-law tests that developed under the 1909 Act, and to "*radically* revise [the] 'work for hire' doctrine." 846 F.2d at 1496 (citing *Easter Seal*, *supra*, 815 F.2d at 330) (emphasis in original). The circuit courts further disagree about whether subdivision (2) of the 1976 definition was intended to be the exclusive basis for determining whether a commissioned work created outside the traditional employment relationship qualifies as a work for hire.

With five circuits on record as clearly divided over the proper interpretation of the work for hire provisions of the 1976 Act, the remaining circuits will no doubt choose between two conflicting and irreconcilable interpretations. Only review by this Court can forestall a further deepening of the conflict that is presented clearly and unequivocably by the decision in this case.

CONCLUSION

This case presents fundamental issues of national importance to the fair and effective administration of United States copyright laws. Work for hire has been interpreted by three circuit courts to deprive creators of the authorship and copyright rights that are essential to their economic survival. Such an interpretation undermines the central purposes of the copyright laws, which are to encourage creative activity for the benefit of the public and to ensure fair compensation to creators for their contributions. In adopting an interpretation that is consistent with these purposes, the decision below presents a clear opportunity for this Court to settle the work for hire controversy that has so divided the lower courts.

Respectfully submitted,

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August 19, 1988

* Counsel of Record

APPENDIX A

THE COPYRIGHT JUSTICE COALITION

Advertising Photographers of America
Advertising Photographers of America—LA
American Federation of Teachers, AFL-CIO
American Federation of Television and Radio Artists, AFL-CIO
American Society of Journalists and Authors
American Society of Magazine Photographers
Art Directors Club of New York
Art Directors Club of Washington
Artists in Print
Association of Medical Illustrators
Authors Guild, Inc.
Boston Visual Artists Union
Committee of Interns and Residents
Council of Writers Organizations
- Albany Writers Guild
- Aviation/Space Writers Association
- Boating Writers International
- Chicago Women in Publishing
- Dance Critics of America
- Editorial Freelancers Association
- Independent Writers of Chicago
- International Motor Press Association
- Midwest Travel Writers Association
- Mystery Writers of America
- National Association of Science Writers

National Book Critics Circle
Outdoor Writers Association of America
Philadelphia Writers Association
Romance Writers of America
Science Fiction Writers of America
St. Louis Writers Guild
Travel Journalists Guild
United States Ski Writers Association
Washington Independent Writers
Writers Guild of America East
Foundation for the Community of Artists
Graphic Artists Guild
National Artists Equity Association
National Cartoonists Society
National Writers Union
Pen American Center
Screen Actors Guild, AFL-CIO
Society of Authors Representatives
Society of Illustrators of New York
Songwriters Guild of America
Visual Artists Association
Writers Watch